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12 Attorneys for Plaintiff
13 SUCCESSFACTORS, INC.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 SUCCESSFACTORS, INC., a Delaware
18 corporation,

19 Plaintiff,

20 v.

21 SOFTSCAPE, INC., a Delaware
22 corporation; and DOES 1-10, inclusive,

23 Defendants.

Case No. CV 08 1376 CW

**DECLARATION OF ROBERT BERNSTEYN
IN SUPPORT OF PLAINTIFF
SUCCESSFACTORS' MOTION FOR
PROTECTIVE ORDER AS TO THIRD PARTY
SUBPOENAS ISSUED BY DEFENDANT
SOFTSCAPE, INC.**

24 I, Robert Bernshteyn, declare as follows:

25 1. I am Vice President, Global Product Marketing and Management, and have been
26 employed at SuccessFactors, Inc. ("SuccessFactors") since June 2004. I make this declaration of
27 my own personal knowledge, except to any extent otherwise specified.

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2. I submit this declaration in support of Plaintiff's Motion for Protective Order as to Third Party Subpoenas Issued by Defendant Softscape, Inc. ("Subpoena Motion"), and, if called upon, could and would testify competently thereto.

3. I have reviewed the subpoenas issued by Defendant Softscape, Inc. ("Softscape") to SuccessFactors' customers, specifically Sears, Roebuck & Co. ("Sears") in Illinois, Intelsat Corp. ("Intelsat") in Washington, D.C., Harris Williams ("Harris Williams") in Virginia, and ICMA-RC Services, Inc. ("ICMA-RC") in Washington, D.C. Three of these companies are still active customers of ours, specifically Sears, Harris-Williams and ICMA. Intelsat is not a current customer. None of these companies are parties to this litigation.

4. Each of these subpoenas demands documents and identifies deposition topics on a broad range of topics regarding the general customer and business relationships with SuccessFactors. They are not directed to the specific statements listed in the "Naked Truth" Presentation at pages 8 (for Sears), 10 (for Intelsat), 11 (for ICMA), and 12 (for Harris-Williams).

5. The deposition topics ask for more than three years' worth of information, including broad inquiries regarding "any complaints, problems, feedback, comments or internal reviews." (See Deposition Topic No. 1.) Softscape also seeks highly confidential, competitively sensitive information about our customers' "experience with the implementation of SuccessFactors' PM, Comp, and/or ASP products, including without limitation whether the budget for implementation of the SuccessFactors' product(s) was exceeded, and the impact or effect of any such implementation on the Intelsat Human Resources department." (See Deposition Topic No. 3.)

6. In each subpoena, Softscape demanded "All documents, including but not limited to proposals, contracts and budget information, concerning the implementation or attempted implementation of any SuccessFactors' product(s)." Softscape's instructions reiterate that each customer is to produce "all of the specified documents and electronic records that are in your possession, or available to you, or to which you may gain access through reasonable effort." There is no date limitation as to documents that must be produced. The document request seems very broad and not well defined. While the scope of the request is vague, what is clear is that the subpoenas seek highly confidential information from our customers and/or former customer.

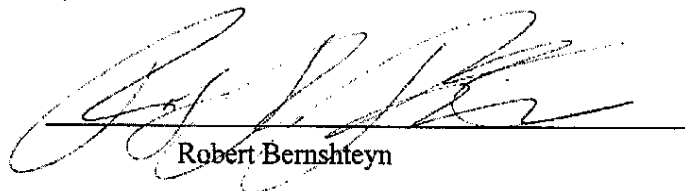
1 7. SuccessFactors considers business proposals, product implementation plans,
2 customer feedback, complaints, comments or internal reviews to be highly confidential,
3 proprietary information.

4 8. SuccessFactors would never disclose this type of highly confidential information.
5 In fact, it takes great steps to protect the confidentiality of this information and prevent the
6 disclosure, particularly to direct competitors. SuccessFactors' employees are all under
7 confidentiality agreements and the information is provided to them on a "need to know" basis
8 only. SuccessFactors maintains records, including in our password-protected Customer Relations
9 Management ("CRM") database, which includes this type of confidential customer information.
10 SuccessFactors would be seriously disadvantaged if this customer information were ever leaked.

11 9. As I understand the deposition topics and document requests, the customers could
12 be required to divulge trade secrets, technical data and other confidential research or development
13 information. The customers might also be required to divulge secret information about their
14 finances, marketing, strategies, or product plans. Disclosure of that information would create a
15 substantial risk of competitive harm or serious injury to SuccessFactors and presumably the third
16 party customer as well.

17 10. I believe that service of subpoenas on our customers will impose significant costs
18 on these customers to collect and produce documents, as well as to prepare and make witnesses
19 available for depositions, even though the customers have no stake in the litigation. I believe
20 these sorts of costs and burdens are not insignificant and, even when inflicted by our competitors,
21 impair and interfere with our company's relationships with our customers.

22 I declare under penalty of perjury under the laws of the United States of America and the
23 State of California that the foregoing is true and correct, and that this declaration was executed
24 this 29th day of April, 2008, in San Mateo, California.

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26
27 
28 Robert Bernshteyn

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